

The Orissa Gazette

EXTRAORDINARY
PUBLISHED BY AUTHORITY

No. 250 CUTTACK, WEDNESDAY, FEBRUARY 9, 2005 / MAGHA 20, 1926

LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 24th January 2005

No. 747-II/1(B)-105/1991-L. E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 11th November 2004 in Industrial Dispute Case No. 28/1992 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial disputes between the management of M/s Orissa Textile Mills Ltd., Choudwar, Cuttack and its workman Shri Jairam Pradhan was referred for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 28 OF 1992

Dated the 11th November 2004

Present :

Shri P. K. Sahoo, O.S.J.S. (Jr. Branch)
Presiding Officer, Labour Court
Bhubaneswar.

Between :

The management of .. First Party—Management
M/s Orissa Textile Mills Ltd., Choudwar.

And

Their ex-Workman .. Second Party—Workman
Shri Jairam Pradhan.

Appearances :

For the First Party—Management .. Shri R. N. Bose, Advocate

For the Second Party—Workman .. Shri S. B. Mishra, Advocate

AWARD

The State Government in exercise of powers conferred by sub-section (5) of Section 12, read with clause (c) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947, have referred the matter in dispute to this Court in the Labour & Employment Department, memo No. 2790 (5)-L. E., dated the 22nd February 1992 for adjudication and Award.

2. The terms of reference may briefly be stated as follows :—

“Whether the action of the management of M/s Orissa Textile Mills Ltd., Choudwar in dispensing with the services of Shri Jairam Pradhan, ex-workman with effect from the 1st November 1989 by way of retirement from service in their Order, dated the 26th October 1989 is legal and/or justified ? If not, to what relief the workman is entitled ?”

3. Workman Jairam Pradhan under the present reference has challenged the action of the management of M/s Orissa Textile Mills Ltd., Choudwar (in short the management) in dispensing with the service with effect from the 1st November 1989 by way of retirement from service vide order, dated the 26th October 1989. According to the workman, he was appointed as an Office Boy with effect from the 28th October 1953 and was subsequently, by order, dated the 8th June 1954 confirmed in the said post. At the time of entering into the service he had declared his date of birth as the 22nd April 1938 as per the entry made in the School Leaving Certificate and the said declaration with regard to his date of birth was accepted by the management and accordingly the service records were prepared by the management. As per the certified standing order of the management, he was due to be retired in the year 1996 after attaining the age of superannuation of 58 years. But surprisingly enough, he was retired from service with effect from the 1st November 1989 but by that time he had not reached the age of superannuation of 58 years. It is alleged that such premature retirement has violated the certified standing order of the management. According to the workman he was due to be retired during the year 1996 on attaining the age of superannuation of 58 years but much prior to that the management had illegally dispensed with his service with effect from the 1st November 1989 by way of retirement from service by order, dated the 26th October 1989 which was illegal and unjustified. Accordingly he has prayed for his reinstatement in service with full back wages along with other service benefits treating his date of birth as the 22nd April 1938. Hence the reference.

4. The management, on the other hand, entered its appearance and filed written statement opposing the claim of the workman. According to the management, the date of birth of the workman was recorded as the 20th October 1931 on the sheet containing the report of the Medical Officer and the date of birth, as claimed by the workman was nowhere recorded in any of the service record of the management. It is categorically averred by the management in its written statement that the workman was superannuated with effect from the 1st November 1989, basing upon the entries recorded in the adult workers register. Besides, the workman

had never made any representation during tenure of his service with regard to the correction of his date of birth, rather after satisfying with the particulars containing in the order of retirement, he applied for payment of final settlement dues and in fact accepted the retiral benefits on the 8th January 1990 without raising any objection thereto. Subsequently, he submitted a representation to the Deputy General Manager, Personnel for correction of his date of birth but the same was not considered for the reasons that he was retired since one month back and that he had never represented to the management for correction of his date of birth or age during his tenure of service. According to the management, the action taken in this respect in dispensing with the services of the workman with effect from the 1st November 1989 by way of retirement from service was legal and justified and the workman is therefore not entitled to any relief as prayed for. On the above backgrounds, the rejection of the claim of the workman has been prayed for by the management under the present reference.

5. On the basis of the above pleadings of the parties, the following issues have been framed :—

ISSUES

- (i) Whether the services of the workman was dispensed with—by way of retirement with effect from the 1st November 1989 on account of wrong calculation of his age ?
- (ii) Is the order, dated the 26th October 1989 passed by the management valid basing on proper document ?”
- (iii) Is the workman entitled to get any relief ?

6. The workman in support of his case has examined himself and another witness namely Gourang Charan Jena as W. Ws. 1 and 2 respectively and has relied upon the xerox copies of the documents such as, E. S. I. card, order, dated the 26th October 1989, school leaving certificate order, dated the 8th June 1954, order, the 29th October 1953, letter of the Assistant Labour Officer, Choudwar, representation and the application for engagement marked as Exts. 1 to 8 respectively. On the other hand, the management has examined one Saroj Kumar Samal as M. W. 1 and has also relied upon the xerox copies of the documents such as, E. S. I. card, certified standing order, notice, agreement, register of adult workers and service record, notice for payment of gratuity, statement of the workman and receipt for final settlement, marked as Exts. A to H respectively in support of its casse.

FINDINGS

7. *Issue Nos. (i), (ii) and (iii)* – For better appreciation and adjudication of the present dispute under reference all the above issues are taken up together.

The perusal of the evidence of the workman already examined as W. W. 1 clearly emerges that he joined in the establishment of the management as an Office Boy with effect from the 28th October 1953 vide the appointment letter, Ext. 5 and his appointment was confirmed

with effect from the 1st June 1954 vide office order, Ext. 4. His date of birth was the 22nd April 1938 and the same was entered in the register of the Mill. Subsequently, the Mill was closed and after closure of the Mill it was taken over under I. D. R. Act, and was reopened. In the year 1980 he got the service. His date of birth was recorded in the declaration form and as per the certified standing order he was to retire at the age of 58 years. Although he was due to be retired in the year 1996 but he was retired on the 1st November 1989 and by that time he was not 58 years old. It is also in his evidence that after his retirement he came to know about the wrong recording of his date of birth and thereafter he obtained the school leaving certificate vide Ext. 3 and submitted an application for necessary correction but his grievances could not be considered by the management. Therefore, he raised a dispute before the Assistant Labour Officer, Choudwar challenging his premature retirement. During the evidence he has duly proved the E. S. I. card, order of retirement, school leaving certificate, confirmation letter, appointment letter, letter of the Assistant Labour Officer, Choudwar and his representation and application for appointment marked as Exts. 1 to 8 respectively. He has categorically stated that since the action of the management in dispensing with his service with effect from the 1st November 1989 by way of retirement from service vide office order, dated the 26th October 1989 (Ext. 2) was illegal and unjustified, he is now entitled to be reinstated in service with full back wages. During cross-examination he has stated that he joined in the service when he was 15 years old and at the time of joining he had submitted his school leaving certificate showing his date of birth. He has categorically stated that he had filed only one school leaving certificate and during the tenure of his service he had never complained before the management regarding the wrong entry of his date of birth but after his retirement for the first time he disclosed regarding the wrong entry of his date of birth. So far as the evidence of W. W. 2, Gouranga Charan Jena is concerned, he has nowhere stated regarding the actual date of birth of the workman and the wrong entry in the register of the Mill, rather in his evidence he admits that at the time of engagement, as per version of the person concerned the age was generally noted down in the adult register and other documents. On the other hand, the evidence of M. W. 1, Saroj Kumar Samal clearly goes to show that at the time of joining the workman had declared his age as 22 years and after serving under the management and after attaining the age of 58 years, he retired from service on the 1st November 1989. He has categorically stated that the Mill was closed and in the year 1981 the State Government took the management of Orissa Textile Mill and there was an agreement between the Government and its workers through O. S. T. C. In the said agreement vide Ext. D, the age of the workman was shown as the 20th October 1931 and the workman had also signed in the said declaration form along with his witness vide Ext. D. It is also in his evidence that the certified standing order, Ext. B, clearly indicates the date of retirement of every employee at the age of 58 years and accordingly the workman retired from service with effect from the 1st November 1989 as per the date of birth, shown in the agreement. He has categorically stated that during the entire service career the workman had never complained about the wrong entry relating to his date of birth in the registers and the documents of the Mill but after his retirement he raised such a dispute. He has also further stated that after retirement the workman accepted all his

retiral dues vide Ext. H. During evidence he has proved the E. S. I. card, certified standing orders of the management, notification, agreement regarding appointment of the workman and the adult workers register, notice for payment of gratuity, statement, dated the 8th January 1990 and receipt for final settlement marked as Exts. A to H respectively. During cross-examination he has denied his knowledge about the entry of the date of birth as well as the educational qualification in the application. It has been suggested to him that the adult workers register has been manufactured for the purpose of this case, to which he has given a negative reply.

8. On careful scrutiny of the school leaving certificate vide Ext. 3 already relied upon by the workman it is seen that the date of birth has been mentioned in the said certificate but surprisingly enough the said certificate has been obtained from the concerned school after one and half month of his retirement which leaves room to entertain doubt about the actual date of birth of the workman and the filing of such a certificate at the time of entry into the service. In this respect the workman clearly admits that after his retirement he obtained the said certificate Ext. 3 and submitted the same before the management along with his application praying for necessary correction. Although he has stated that at the time of his joining he has submitted the school leaving certificate but the same has not been brought to the present case record. Even the said certificate has nowhere been proved by the workman during his evidence. On the other hand the perusal of the agreement for appointment vide Ext. D clearly emerges that the date of birth of the workman has been shown as the 20th October 1931 and the workman has nowhere challenged the said document anywhere in the evidence. Therefore, I find no cogent reason to disbelieve the above document vide Ext. D already relied upon by the management.

9. Both the parties have led evidence in support of their respective cases. On careful analysis of the evidence already led by the workman, it is clearly evident that during the tenure of the service the workman had never complained before the management regarding the wrong entry of his date of birth but subsequently after his retirement for the first time he disclosed such wrong entry of his date of birth in all the registers and documents. The management has also led evidence to the effect that during the entire service career the workman neither disputed nor raised any complaint with regard to the wrong entry of his date of birth in all the registers and the documents of the management but after retirement the workman raised such a dispute. That apart, the workman has accepted his retiral benefits vide Ext. H. It is settled law that at the fag end of career, a party cannot be allowed to raise a dispute regarding his date of birth. In that view of the matter the claim already made by the workman is not tenable in the eye of law since the declared age which indicated the date of birth as the 20th October 1931 in Ext. D was to be the basis for his retirement from service, on attaining the age of superannuation at 58 years as per the provision vide Ext. B, the certified standing orders of the management. In the case of *Burn Standard & Co. Vrs. Dinabandhu Majumdar* (1995) 4 JT (Supreme Court) 23 (AIR 1995 Supreme Court 1499) the Hon'ble Apex Court has held that "Writ petition for correction of age at the fag end of the career cannot be entertained". In another decision reported in 1994 Lab. I. C. 2498 (Supreme Court) the Hon'ble Apex Court has consistently held that "Where the Government servant made an application for correction of date of birth exactly one year before his superannuation, inordinate delay in making the application is

itself a ground for rejecting the correction of date of birth. The Government servant having declared that his date of birth as entered in the service register to be correct would not be permitted at the fag end of his service career to raise a dispute as regards the correctness of the entries in the service register". After carefully examining the evidence on record led by the parties being coupled with the proved documents and keeping in view the settled position of law, I am of the view that the action of the management in dispensing with the services of the workman with effect from the 1st November 1989 by way of retirement from service in their order, dated the 26th October 1989 was legal and justified. In that view of the matter, the workman is not entitled to any relief as prayed for. All the above issues are answered accordingly.

10. Hence it is ordered :

That the action of the management of M/s Orissa Textile Mill Ltd., Choudwar in dispensing with the services of Shri Jairam Pradhan, ex-workman with effect from the 1st November 1989 by way of retirement from service in their order, dated the 26th October 1989 is legal and justified. In such view of the matter, the workman is not entitled to any relief as prayed for.

The reference is thus answered accordingly.

Dictated and corrected by me.

P. K. SAHOO
11-11-2004
Presiding Officer
Labour Court
Bhubaneswar.

P. K. SAHOO
11-11-2004
Presiding Officer
Labour Court
Bhubaneswar.

By order of the Governor
D. MISHRA
Under-Secretary to Government